

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5918

In re: Designation of Eligible)	Hearing at
Telecommunications Carriers Under)	Montpelier, Vermont
the Telecommunications Act of 1996)	March 13, 2003
(In re: RCC Atlantic, Inc. d/b/a Unice))	

Order entered: 11/14/2003

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1. Summary

For a telecommunications carrier to receive federal universal-service support, it must first be designated as an "Eligible Telecommunications Carrier" ("ETC"). Under federal law, the Vermont Public Service Board ("Board") is responsible for designating ETCs in Vermont. Consistent with a stipulation, this Proposal for Decision recommends that the Board designate RCC Atlantic, Inc., d/b/a UniceL ("RCC"), as an Eligible Telecommunications Carrier through December 31, 2005, within a service area consisting of 91 wire centers.

This Second Proposed Decision recommends adoption of a stipulation of the parties and conditions contained in that stipulation, including those relating to customer deposits, disconnections and service quality. It also recommends that the Board impose several additional conditions, notably that RCC be required to use federal support to enhance its signal coverage, to actually expand its signal coverage, and to provide assistance to potential subscribers. The Board should also explain to RCC that it expects RCC to provide detailed signal coverage information if and when it seeks recertification in 2005. Finally, the Board should require RCC to provide "CMRS Wireless Service Provider Local Number Portability" on and after May 24, 2004.

2. Procedural History

This Docket was initiated in October of 1996 to designate ETCs throughout Vermont. On October 15, 2002, RCC petitioned the Board, pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended in 1996 ("the Act"),¹ and Section 54.201 of the Federal Communications Commission ("FCC")'s rules,² asking that the Board designate RCC as an ETC. RCC seeks ETC certification in 91 exchange areas currently served by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon-Vermont"), and shown in Appendix A to this Order. RCC filed a memorandum in support of its petition.

1. 47 U.S.C. § 214(e)(2).

2. 47 C.F.R. § 54.201.

A status conference was held on November 14, 2002, to consider the schedule for and issues raised by RCC's petition. At that conference, I asked RCC a number of questions relating to technological issues unique to wireless carriers. RCC responded in the prefiled testimony and exhibits of Elizabeth Kohler filed on November 22, 2002. Because this Docket has been open for some years and has been used for other purposes, several parties who participated earlier did not participate in this phase of the proceedings.

Scheduling orders were issued on December 5, 2002, and February 19, 2003. In the latter, I asked the parties to analyze the legal standards applicable to this proceeding, and in particular the degree to which the Board has discretion to grant or withhold certification based upon considerations of the public good or similar standards. I also asked for analysis of recent FCC decisions and the evidentiary burden on RCC, if any, to demonstrate that it actually provides or has specific plans to provide service to all or a portion of the area for which it seeks ETC certification.

On February 14, 2003 the Vermont Department of Public Service ("DPS") and RCC ("Stipulating Parties") filed a stipulation in support of RCC's designation as an ETC. An amended stipulation was filed on February 25 to correct an inadvertent omission ("Amended Stipulation" or "Stipulation"). The Amended Stipulation provides that RCC should receive ETC designation through December 31, 2005. RCC also makes several undertakings in the Amended Stipulation relating to various Board policies for telecommunications carriers, including service quality requirements and deposit and disconnection requirements.

Except for minor modifications to the schedule, the Docket proceeded in accordance with my procedural orders, which included discovery on RCC and the filing of testimony by the DPS. No other parties filed testimony or participated actively other than as observers. A technical hearing was conducted on March 13, and testimony was taken from the Stipulating Parties.¹ On March 17 the Stipulating Parties filed a joint proposal for decision. Other parties were required to file briefs by March 31, but none did so. After the record closed, RCC filed a letter¹ making

3. Paul Phillips, Esq. attended the technical hearing on behalf of nine independent telephone companies listed on the first page of this Proposal for Decision.

4. Letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel, Department of

certain commitments in this proceeding, and the contents of that letter are included in the findings below.¹

I issued a proposal for decision on May 15, 2003. The parties filed comments and requested oral argument. RCC also requested that the Board issue its decision in time to allow RCC to receive support in the third quarter of 2003. On June 26, the Board did issue a certification based on the May 15 proposal for decision. The Board stated, however, that it would treat RCC Atlantic's comments as a Motion for Reconsideration and request for oral argument on that motion. The Board also stated that, in reviewing the Motion, it would not apply the standards set out in V.R.C.P. Rules 59 or 60, but would instead give the Motion for Reconsideration the same level of consideration that it would normally provide to comments on a Proposal for Decision and an oral argument.

Subsequently, the Board issued a Scheduling Order that directed the Hearing Officer to revise the proposed decision to the extent appropriate in light of the comments of the parties. Accordingly, this second or finalized proposed decision reflects numerous comments filed by the parties to the first proposal for decision. It makes minor modifications to a few proposed findings, it includes a more extensive discussion of legal precedent, and it makes slightly different recommendations.

3. Findings

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

1. RCC provides certain telecommunications services in Vermont, within the meaning of Section 203(5) of Title 30 of the Vermont Statutes Annotated, and owns and operates public-service property in connection therewith within the meaning of Section 201 of Title 30, and

Public Service.

5. In the first proposal for decision issued in this docket, discussed below, I proposed to include the letter in the record of this proceeding. No party objected.

therefore is subject in certain respects to the Board's jurisdiction. Amended Stipulation at ¶¶ I.5, II.1.

2. RCC holds a Certificate of Public Good to provide telecommunications services in Vermont, issued in Docket No. 6072. Amended Stipulation at ¶ I.6.

3. RCC is a Minnesota corporation registered to do business in the State of Vermont as a foreign corporation and operates in Vermont under the tradename "Unicel." Amended Stipulation at ¶¶ I.5-6.

4. RCC's regional headquarters are located in Colchester, Vermont. Exh. RCC-2 at 2.

5. RCC is a wholly-owned subsidiary of Rural Cellular Corporation (herein "Rural Cellular"), which is a publicly-traded company with over 111,000 telecommunications-service subscribers that, with its affiliates, operates "commercial mobile radio services" ("CMRS"), including PCS, cellular, and paging services, in the States of Maine, Minnesota, North Dakota, South Dakota, Vermont, and Wisconsin. Pet. at ¶ 2.

6. RCC is a CMRS provider within the meaning of "mobile service" as defined by Section 153(27) of Title 47, United States Code, and provides telecommunications services as defined in Section 254(d) thereof and Section 54.703(a) of the Code of Federal Regulations. Amended Stipulation at ¶ I.7; Exh. RCC-2 at 2.

7. RCC is licensed by the Federal Communications Commission to serve the entire State of Vermont and provides service in the Burlington, Vermont, Cellular Geographic Service Area, the Vermont One Rural Service Area, and the Vermont Two Rural Service Area. Amended Stipulation at ¶ I.8; exh. RCC-2 at 1-2.

8. RCC also is a telecommunications carrier as defined by Section 153(44) of Title 47 and Section 51.5 of the Code of Federal Regulations, is a telecommunications carrier for the purposes of Part 54 of the FCC's rules, and therefore is considered to be a common carrier under the Act. Amended Stipulation at ¶ II.1; exh. RCC-2 at 2.

9. A telecommunications carrier must be designated as an ETC for a "service area" (an "ETC Service Area") to receive federal universal-service support. Exh. RCC-2 at 2.

10. RCC's petition seeks ETC designation for a non-rural service area in Vermont comprising all of the area currently served by Verizon-Vermont. A list of telephone exchanges comprising that area is described in Appendix A to this Order. Kohler pf. at 1-2; Petition exhibit B.

11. RCC offers its services throughout Vermont. It operates 68 cell sites, listed as Appendix B to this Order. These locations provide good coverage to many of Vermont's more rural areas, including the town of Burke and the village of Island Pond. Kohler pf. at 4; exh. RCC-3; Amended Stipulation at ¶¶ II.3-4; exh. RCC-2 at 3.

12. If RCC receives access to Universal Service Fund ("USF") subsidies, it will "look to bring" improved coverage to areas like Derby, Swanton, Highgate, Barre, East Barre, East Montpelier, Wilmington, Arlington, and Manchester. RCC states that it will also use USF subsidies to improve cellular service to communities that have some level of service, but need improved service through added channel capacity. Kohler pf. at 5.

13. Effective service at a particular location may require some enhanced equipment such as an external fixed antenna on a car or home, a "cell extender," or a more powerful telephone. Sometimes RCC adjusts its existing antennas or provides a "repeater" to improve service. If an RCC customer needs an antenna, a cell extender or a better handset, the customer may purchase those items at retail. The cost of a cell extender can range from \$69 to \$159. A more powerful antenna unit costs approximately \$250. Tr. 3/13/03 at 29-36 (Kohler).

14. A number of areas in Vermont have little or no effective cellular service. It is possible that, even with extender devices, one or more municipalities and one or more wire centers within the proposed service area have no coverage from RCC's signal. Kohler pf. answer 8; tr. 3/13/03 at 30.

15. The FCC requires that RCC offer its services at geographically averaged prices. Tr. 3/13/03 at 39-41 (RCC Counsel).

16. Once designated as an ETC, RCC will be eligible to receive federal universal service support, including high-cost support based upon Verizon-Vermont's forward-looking cost of service. Support is paid based on the customer's billing address. When paid to RCC, this support will be "targeted" to wire centers that the FCC considers to have high costs. In Chelsea, support is \$18.19 per line per month. Support will exceed \$10 per month in more than a dozen

wire centers and will exceed \$5 per month in more than three dozen wire centers. Additional "targeted" support may be available under other programs as well. Exh. Board 1; tr. 3/13/03 at 26-27 (Kohler).

17. Once designated, RCC will advertise the availability of all USF-required services throughout its service area by media of general distribution, which may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone-directory advertising. Amended Stipulation at ¶¶ II.3-4; exh. RCC-2 at 3.

18. RCC provides voice-grade access to the public-switched network through interconnection arrangements with local telephone companies. Amended Stipulation at ¶ II.3.i; exh. RCC-2 at 3-4.

19. RCC provides local usage under a variety of rate plans. Amended Stipulation at ¶ II.3.ii; exh. RCC-2 at 4.

20. RCC satisfies the dual-tone, multi-frequency ("DTMF") signaling requirement by using out-of-band, digital signaling and in-band, multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. Amended Stipulation at ¶ II.3.iii; exh. RCC-2 at 4.

21. RCC provides single-party service, as defined by FCC Rules in Section 54.101. Amended Stipulation at ¶ II.3.iv; exh. RCC-2 at 4.

22. RCC provides 911 access to emergency services throughout its service area. Amended Stipulation at ¶ II.3.v; exh. RCC-2 at 4.

23. RCC routes all wireless 911 calls to the designated "public answering safety point" ("PSAP"). Kohler pf. at 2.

24. RCC is in the process of implementing E-911 Phase I service that will enable the PSAP to receive a callback number and cell-site location along with the voice communication of a wireless 911 call. Kohler pf. at 2-3.

25. RCC has installed the hardware and software necessary for Phase I services. Kohler pf. at 3.

26. RCC is also in the process of implementing Phase II E-911 service, which will allow a PSAP to locate a caller by identifying a latitude and longitude location with a certain degree of accuracy. Kohler pf. at 3.

27. RCC provides customer access to operator services by dialing "0." Amended Stipulation at ¶ II.3.vi; exh. RCC-2 at 4.
28. RCC provides customer access to interexchange services, including a "dial-around" option to reach an interexchange carrier of choice, by means of interconnection agreements with interexchange carriers. Amended Stipulation at ¶ II.3.vii; exh. RCC-2 at 4.
29. RCC provides directory assistance to customers who dial "411" or "555-1212." Amended Stipulation at ¶ II.3.viii; exh. RCC-2 at 5.
30. In lieu of toll limitation, which is not technologically available at this time, upon designation as an ETC, RCC will provide toll-blocking service for Lifeline customers. Amended Stipulation at ¶ II.3.ix; exh. RCC-2 at 5.
31. RCC will offer Lifeline and Link-up assistance programs for qualifying low-income customers in the proposed service area. Amended Stipulation at ¶ II.3.
32. RCC plans to offer a "Basic Package" of services at \$25.00 per month, nominal price. This package provides the basis for calculating the amount of benefits to Lifeline customers. After July 1, 2003, a customer who purchases the Basic Package from RCC and qualifies for Lifeline would receive a federal benefit of \$10 plus \$6.50 of state support for a total of \$16.50. Net cost to the customer would be \$8.50 per month. Tr. 3/13/03 at 17-18 (Frankel).
33. RCC provides most cell sites with backup power to maintain the continuity of its service in the event its main power supply goes down. RCC uses batteries that provide between two to three hours of power backup. Kohler pf. at 2.
34. RCC also equips hub cell sites (a hub site includes facilities to backhaul traffic from other cell sites to the switch) or remote cell sites with additional power backup from a propane or diesel generator, which extends the power backup to at least 12 hours. Kohler pf. at 2.
35. RCC maintains a large diesel generator at its switch location in Colchester, Vermont, that will provide up to two days of extended power backup before requiring refueling. Kohler pf. at 2.
36. The power backup facilities enable RCC to maintain its wireless network, including its 911 service, even in the event of a sustained power outage. Kohler pf. at 3.

37. RCC demonstrated its ability to maintain its network during the 1998 ice storm, with its resultant extended power and landline-telephone-service outages, when RCC kept a majority of its cell sites and its switch operational, served as the primary line of communications for public-safety personnel, and donated numerous cell phones to the National Guard, Red Cross and the State Police to ensure those organizations maintained critical lines of communication. Kohler pf. at 3.

38. Pursuant to the Amended Stipulation, RCC will comply with the service quality standards established in Docket 5903, with clarifications set forth in the following three findings. Frankel pf. at 4-5.

39. RCC does not publish a directory of its customers' telephone numbers. Should RCC provide such services in the future, it will comply with Docket 5903's requirements regarding such services. Frankel pf. at 5.

40. Not later than the receipt of ETC designation, as required in Docket 5903, RCC will begin providing a 40 percent discount to persons who are deaf, speech impaired or hearing impaired. Frankel pf. at 5.

41. Docket 5903 requires that customers cannot be disconnected for nonpayment of charges for toll and optional service. RCC will define the local portion of a customer's bill as the amount of \$25.00 plus any accumulated local airtime minutes. The \$25.00 charge will be the basis for the calculation of the amount required from a delinquent customer if the customer intends to keep his or her basic service. RCC retains the authority to restrict these customers' basic service to a restricted plan that prohibits roaming and toll calling. Should a customer insist on a plan that includes roaming and toll services, then RCC may require a larger payment in order for the customer to continue service. RCC is investigating the ability of its billing systems to apply customer payments first to the local service portion of a customer's bill. The Department of Public Service has not objected to this plan. Frankel pf. at 5; letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel.

42. RCC will comply with the Board's rules regarding required customer deposits. RCC will not require a deposit greater than two-twelfths of average annual revenue, an amount currently equal to \$110.00. RCC also will restrict some customers with poor credit ratings to a plan

without toll or roaming capability, but such customers could make toll calls with prepaid calling cards. Letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel.

43. RCC will comply with the Board's rules regarding refunds of customer deposits. Deposits will be refunded on the customer's anniversary date along with accrued interest, except for customers who were disconnected and customers who received more than three disconnect notices. Letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel.

44. RCC will comply with the Board's rules regarding residential disconnections. Interception of outgoing calls is the method by which this wireless carrier "disconnects" service. Disconnection will be limited to persons who have received disconnection notices and in accordance with the rule. Frankel pf. at 6-7.

45. Under the Board's rules, disconnection of utility service may occur only between the hours of 8:00 A.M. and 2:00 P.M. of the business day specified on the notice of disconnection, or within a specified number of business days thereafter. Board Rule 3.306. "Business day" is defined as Monday through Thursday, with exceptions for holidays and days when the company's business office is not open to the public. Board Rule 3.301(F). This definition limits the days on which disconnections can occur. The purpose of this rule is to ensure that customers can readily restore service in case of disconnection and can have access to the Department of Public Service for assistance regarding disputes. RCC will provide customer service 24 hours per day, seven days per week, and can restore service at any time. When a disconnected RCC customer calls RCC outside the disconnection window set forth in the rule, RCC will immediately restore service without payment, and RCC will inform the customer of the availability of assistance from the Department of Public Service in resolving the complaint. This service will continue at least until the close of the next business day. Frankel pf. at 7.

4. Discussion

This Docket requires the Public Service Board to exercise authority, created by federal

law, to certify a "telecommunications carrier"¹ as an "Eligible Telecommunications Carrier." Section 254(e) of the Telecommunications Act of 1996 provides that only an "eligible telecommunications carrier" as designated under section 214(e) of that Act may receive federal universal service support. Section 214(e)(2) permits the Vermont Public Service Board to make this designation for service in Vermont as to wire centers served by Verizon-Vermont.¹

Because the active parties have stipulated to certification, there are few issues in this proceeding. The following discussion covers the standards that apply to the Board's decision, and in particular whether the Board has broad discretion or must play a narrow factfinding role. It also discusses the actual extent of RCC's signal coverage of the service area in which RCC seeks certification. Finally, it discusses number portability. In several areas, this Second Proposed Decision recommends that the Board add conditions to RCC's certification that were not included in the Amended Stipulation.

1. Public Interest, Convenience and Necessity

Section 214(e)(1) of the Communications Act establishes some minimum standards of factual proof for ETC certification. The most fundamental of those requirements is that the telecommunications carrier offer "the services that are supported by Federal universal service support mechanisms."¹ The carrier also must advertise the availability of those services using media of general distribution.¹

6. "Telecommunications carrier" is defined by 47 C.F.R. § 54.5.

7. 47 U.S.C. § 214(e); 47 C.F.R. § 54.201. If a state commission does not have authority to designate ETCs, the FCC will act in its stead. *E.g., Federal State Joint Board on Universal Service, RCC Holdings, Inc.*, Wireline Competition Bureau, Memorandum Opinion and Order, released Nov. 27, 2002, ¶ 12.

8. 47 U.S.C. § 214(e)(1)(A).

9. 47 U.S.C. § 214(e)(1)(B).

The FCC has adopted rules defining "the services that are supported by Federal universal service support mechanisms." They consist of nine services: voice grade access to the public switched network; local usage; touch-tone service; single-party service; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation ("Nine Requirements").¹ These Nine Requirements must be offered throughout the service area for which the designation is received, and the services must be offered either using the ETC's own facilities or a combination of its own facilities and resale of another carrier's services. The ETC must also advertise the availability of these services and the charges for those services using media of general distribution.¹ Under the Stipulating Parties' view of their stipulated findings, RCC clearly meets all of the federally established requirements for ETC certification.

(1) Supplemental Criteria, Requirements and Conditions

A threshold issue in this proceeding is whether the Public Service Board has discretion to supplement federal requirements and to require either more stringent or additional standards, requirements or criteria or to impose conditions in addition to those defined by section 214(e)(1). The Stipulating Parties contend that if the Board finds that RCC meets the Nine Requirements, then it *must* grant ETC certification.¹ In particular, they argue that the Board may not perform any "public interest" analysis and cannot impose any additional "criteria" for certification. They base this view on statutory analysis and on decisions of courts, the FCC and other state commissions.

I disagree with the Stipulating Parties' overall reading of the law. For the reasons explained below, I conclude that the Board must make a determination on whether granting ETC status is in the public interest, convenience and necessity. In so doing, the Board has broad discretion to consider matters outside the minimal criteria established by section 214(e)(1), and the Board has authority to impose conditions subsequent on ETC certification in the service area

10. 47 C.F.R. § 54.101(a), (b).

11. 47 C.F.R. § 54.101(b).

12. RCC reiterated this position in its comments on the Proposed Decision. RCC Comments on First Proposed Decision at 3.

of a non-rural incumbent carrier, so long as they are reasonably related to the public interest, convenience and necessity.

(2) Statutory Analysis

Section 214(e)(2) of the 1996 Act governs the procedures for state certifications of ETCs. It provides as follows:

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.¹

Considered separately, the third and last sentence is the easiest to construe. Certain findings regarding the "public interest" are required where a case concerns a service area already served by a rural telephone company. RCC here seeks certification only in parts of Vermont served by Verizon-Vermont, a wireline carrier characterized by FCC rules as a "nonrural" company. Therefore, the third sentence of (e)(2) is inapplicable, and the Board is not required by that sentence to make a finding that certification is in the public interest.

Construing the second sentence is more difficult because of the complex syntax devoted to covering two cases. The Stipulating Parties rely on the word "shall" in the clause relating to "other areas." They contend here that "shall" prohibits the Board from imposing any additional criteria for ETC certification beyond those Nine Requirements defined in section (e)(1). In other

13. 47 U.S.C. § 214(e)(2). *See also*, 47 C.F.R. §54.201(c), which repeats the statutory language verbatim in all material respects.

words, they read "shall" to require the Board to grant the designation without adding new criteria.

I conclude the Stipulating Parties have overlooked an essential provision of the second sentence of (e)(2), that the state commission's decision be made "consistent with the public interest, convenience, and necessity." This expresses a Congressional intent that state commissions *should* exercise some discretion in ETC certification cases to protect the overall public interest. Indeed, it seems highly likely that Congress intended that state commissions exercise discretion over these cases. It would have been largely pointless to assign these cases to state commissions and then deprive them of discretion to consider matters of state concern.¹ In my view, the word "shall" has a narrower meaning, which I explain below.¹

RCC also argues that a reading of section 214(e)(2) as a whole supports its interpretation. If the phrase "consistent with the public interest, convenience, and necessity" in the second sentence of § 214(e)(2) creates discretion for the Board in all ETC cases, RCC contends that this "writes all substantive distinction out of subparagraph (2)'s [second and third] sentences, since the third sentence also requires a finding of "public interest" in certifying an ETC in certain cases.¹ RCC is correct that a fundamental principle of statutory construction is to give meaning to all portions of a statute. I agree that if the "public interest, convenience and necessity" standard in the second sentence already applies in all cases, Congress had no obvious reason to add the third sentence that also requires a determination of "public interest" to a subset of those cases. The statute is certainly less than a model of clarity, and is difficult to construe in light of the common purposes of statutory language.

But RCC's construction creates an even more serious problem. In protecting the third sentence, RCC forsakes the second sentence. Recognizing that the Board might have broad discretion in "rural" proceedings, in other cases RCC would limit review to a few narrow issues defined by the FCC. That construction also makes pointless the "public interest, convenience

14. As seen below, Congress can and did rely on the FCC to make these decisions directly when no state commission could do so. 47 U.S.C. § 214(e)(6). If Congress had wanted ETC certification decided solely based on federal standards, no better instrument could have been found than the FCC itself.

15. See footnote 30, below, and accompanying text.

16. RCC Comments on First Proposed Decision at 5.

and necessity" language in the statute. If adopted, this construction would restrict the Board's discretion over most of the geographic area of Vermont, including many rural areas that are served by Vermont's only so-called "nonrural" company.¹

Fortunately, the FCC's own decisions suggest a way to give meaning to both of these apparently redundant passages. Reading subsection (e)(2) as a whole, I interpret the second and third sentences as having different purposes. The key, in my view, is the need for explicit findings. The third sentence says that a state commission "shall find" that designation is in the public interest in cases involving rural telephone company areas. In other cases, including this docket, the second sentence merely directs that a decision must be "consistent with" a different standard.

Where a rural telephone company's service area is affected, the "shall find" language in the third sentence of § 214(e)(2) imposes an affirmative obligation for factual findings. Accordingly, it would be error for the Board to issue an order that certifies an ETC for an area served by a rural telephone company without a conclusion, supported by findings, that the certification is in the public interest.

17. Verizon-Vermont, a "nonrural" company under the FCC's definition, although it serves the majority of Vermont's rural customers.

On the other hand, the phrase "public interest, convenience and necessity" serves a different purpose. The phrase was a natural choice if Congress intended to preserve broad discretion for state commissions hearing ETC certification cases. The term is commonly used in state statutes regarding the granting of utility charters¹ and regarding eminent domain.¹ The factual complexity inherent in such cases makes it difficult for legislatures to provide in advance a more explicit standard. Rather, the language ensures that fact-finding bodies have broad discretion to consider facts that they think bear on the public interest. I infer a similar purpose here. In other words, the phrase "public interest, convenience and necessity" ensures that decision-makers apply a broad standard of evidentiary relevance and also ensures that they have broad discretion in imposing conditions. The phrase is not intended primarily to require detailed factual findings.¹

Accordingly, under the second sentence, the Board *may* inquire broadly in this proceeding as to matters relevant to the public interest, convenience and necessity, and it may impose related criteria and conditions on *any* ETC applicant. This construction provides rural telephone companies with an extra measure of protection in the form of minimum required findings. Consistent with the apparent intention of Congress, while any existing ETC *might* be

18. *See, e.g.,*

(1) N.Y. Public Service Law § 126(g) (McKinney 2000) (certificate for power plant).

(2) Cal. Public Utilities Code § 10206 (West 1994) (certificate from city or county for water or gas utility).

Using a similar but less common phrasing, Vermont law provides that a certificate shall be issued if it will "promote the general good of the state." 30 V.S.A. § 231(a). The Public Service Board has often issued certificates of public good to new utility companies, particularly competitive telecommunications companies, based solely upon uncontested allegations made in filings and without live cross-examination.

19. *See, e.g.,* Massachusetts General Laws Annotated Part I. Administration of the Government Title XXII. Corporations Chapter 164. Manufacture and Sale of Gas and Electricity Electric Power Facilities--energy Needs--environmental Protection § 69S. Eminent domain with respect to oil pipelines; requisite procedures; rights relative to taking (eminent domain of lands needed for oil pipeline).

20. At least one FCC decision is consistent with this reading. In 2002 the FCC granted certification to one of RCC's affiliates in Alabama for an area served by a rural telephone company. The decision recited the statutory standard but made no explicit finding that certification was consistent with the public interest, convenience and necessity under the second sentence of § 214(e)(2). Because an area served by a rural telephone company was involved, however, the decision did find certification to be consistent with the public interest, apparently under the third sentence of § 214(e)(2). *Federal-State Joint Board on Universal Service, RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, DA 02-3181 (Wireline Comp. Bur. rel. Nov. 27, 2002) (app. for review pending) ("*RCC Holdings - Alabama*"), ¶¶ 5, 21, 22.

protected by a state commission, the third sentence ensures that some minimum level of protection *will* be provided to a "rural telephone company."

(3) Judicial Precedent

Once before, the FCC decided that state commissions had no discretion in deciding ETC cases involving nonrural carriers. In 1997, the Commission declared that states were without power to add to the requirements imposed by federal law and FCC rule. The FCC said that a state commission:

must designate a common carrier as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1). . . . [T]he discretion afforded a state commission under section 214(e)(2) is the discretion to decline to designate more than one eligible carrier in an area that is served by a rural telephone company; in that context, the state commission must determine whether the designation of an additional eligible carrier is in the public interest. The *statute does not permit* this Commission or a state commission to supplement the *section 214(e)(1) criteria* that govern a carrier's eligibility to receive federal universal service support.¹

This policy was reversed on appeal. In *Texas Office of Public Utility Counsel v. FCC* ("*Texas OPUC*"), the Fifth Circuit Court of Appeals held that the FCC had erred:

21. *Federal-State Joint Board on Universal Service*, First Report and Order, released May 8, 1997, FCC 97-157, ¶ 135, 12 F.C.C.R. 8776, 8851.

. . . in prohibiting the states from imposing additional eligibility requirements on carriers otherwise eligible to receive federal universal service support. The plain language of the statute speaks to the question of how many carriers a state commission may designate, but *nothing in the subsection prohibits the states from imposing their own eligibility requirements*. This reading makes sense in light of the states' historical role in ensuring service quality standards for local service. Therefore, we reverse that portion of the Order prohibiting the states from imposing any additional requirements when designating carriers as eligible for federal universal service support.¹

I find the Fifth Circuit's *Texas OPUC* reasoning to be consistent with my reading of the statute, and I follow it. The Vermont Public Service Board may impose additional eligibility requirements on an applicant seeking certification as an ETC under 47 U.S.C. § 214(e)(2) for a service area currently served by an incumbent telephone company that is not a rural telephone company.

RCC cites a footnote in the *Texas OPUC* decision that placed some limits on state discretion. The footnote reads:

[I]f a state commission imposed such onerous eligibility requirements that *no otherwise eligible carrier* could receive designation, that state commission would probably run afoul of § 214(e)(2)'s mandate to 'designate' a carrier or 'designate more than one carrier.'¹

22. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999)(footnote omitted, italics added)(hereafter "Texas OPUC").

23. *Texas OPUC*, *supra*. at 418 n. 31 (emphasis added).

RCC interprets the italicized language to mean if an applicant meets the nine criteria set out by the FCC under section 214(e)(1), the Public Service Board must grant certification.¹ In other words, if *any* "otherwise qualified" applicant would be disqualified by a Board-imposed eligibility requirement, this would violate federal law.

RCC's reading of the footnote is overly broad and undercuts the Court's main holding. The footnote did not say that a state-imposed requirement is invalid if it could disqualify *any* applicant. That would annul the major holding that states *may* impose additional requirements and that the FCC is powerless to prohibit the imposition of such additional requirements. Rather, the footnote set a cautionary outer limit for the states. It said that a requirement would go too far if "no" carrier that meets all the other requirements could satisfy it. In other words, the court limited state discretion by prohibiting conditions or added eligibility requirements that create impassable barriers for *all* carriers.

24. "[T]he Board is obligated to issue an ETC certification to RCC if it has the capability to provide the Nine Required Services and commits to advertise them." RCC Comments on First Proposed Decision at 3. *See also*, RCC Comments on First Proposed Decision at 4-5.

RCC admits the FCC may not outright prohibit states from imposing requirements,¹ but RCC seemingly reads the Court's footnote as a new bridge to the same prohibited ground. If the Board cannot impose additional criteria that an applicant might not be able to meet,¹ the Board has the right to impose requirements only if they have no substance. RCC seems to argue that states are free to impose any criterion they wish, so long as either the applicant voluntarily agrees or that it has no risk of failure.

A narrower reading of the Court's footnote produces a more balanced reading of the statute and of the broad holding in *Texas OPUC*. States may indeed impose requirements on ETCs. These requirements can be based on concerns about the public interest, convenience and necessity. But the requirements cannot be so rigorous that ETC certification is effectively beyond the reach of all applicants.

(4) "Criteria," "Requirements," "Conditions Precedent" and Section 214(e)(1)

25. "The PFD also states, correctly, that state commissions may 'impose additional eligibility requirements on an ETC applicant.'" RCC Comments on First Proposed Decision at 4.

26. *E.g.* RCC Comments on First Proposed Decision at 6.

RCC acknowledges that the Board may impose additional "eligibility requirements,"¹ and indeed it acknowledges that it has acceded to some "conditions" sought by the Department of Public Service, including service quality requirements.¹ But RCC simultaneously contends that a state commission cannot "establish additional *criteria* for certification"¹ beyond the Nine Requirements adopted by the FCC under § 214(e)(1). In other words, RCC contends that "if a carrier satisfies the terms of § 214(e)(1), a state commission *must* designate it as eligible,"¹ and the Board cannot impose additional "criteria."

RCC apparently contends that an "eligibility requirements" and "criteria" for certification are fundamentally different. I do not find the distinction meaningful.¹ Generally, most "requirements" can be rephrased as "criteria," and vice-versa.

It is true that the *Texas OPUC* Court's statement of its holding relates to "requirements." But RCC cannot escape the holding with a semantic distinction, particularly when it appears to have been invented subsequently. The Court's opinion violated in both possible ways the distinction that RCC urges here. It used the word "criteria" to refer to additional obligations imposed by state commissions,¹ and it used "eligibility requirements" to describe the Nine

27. RCC Comments on First Proposed Decision at 4 ("The PFD also states, correctly, that state commissions may 'impose additional eligibility requirements on an ETC applicant.'"); *id.* at 6; *id.* at 7 ("This Board has the right to impose requirements for ETC eligibility that are 'additional' to those required by the Act.").

28. *Id.* at 4.

29. *Id.* at 4 (emphasis in original).

30. RCC Comments on First Proposed Decision at 4, quoting from *Texas OPUC* at 417.

31. RCC cites the following language from the *Texas OPUC* order to support its argument. RCC reports that the *Texas OPUC* order "held in fact" that:

With limited exceptions for rural areas, a state commission has no discretion when assessing a carrier's eligibility for support. If a carrier satisfies the terms of § 241(e)(1), a state commission *must* designate it as eligible.

RCC Comments on First Proposed Decision at 4, quoting from *Texas OPUC* at 417 (emphasis in original). However, the quotation is a misrepresentation of the Court's decision. RCC failed to note that preceding the quoted text the Court said this: "In the Order, the FCC interpreted § 214(e)(2) in this way." In other words, contrary to RCC's citation, the two quoted sentences were not the holding of the Court but the Court's preliminary discussion describing the order under review. Since that FCC order was reversed, the quoted language does not "in fact" describe holding of the court, but rather the *losing party's* position.

32. 183 F.3d 418 ("Nothing in the statute, under this reading of the plain language, speaks at all to whether the FCC may prevent state commissions from imposing additional criteria on eligible carriers.").

Requirements under § 214(e)(1).¹ The Court apparently considered the terms, "eligibility requirements" and "criteria," to be synonymous.

RCC cannot avoid the holding of *Texas OPUC* merely by recharacterizing a state "requirement" as a "criterion." The Board's authority to conditions may have limits; but the nature of those limits are not discovered by placing it in one pigeonhole called "requirements" or a different pigeonhole called "criteria."

33. 183 F.3d 418, *See also*, 183 F.3d 417 ("[T]he FCC ruled that a state commission may not impose additional eligibility requirements on a carrier seeking universal service support in non-rural service areas.").

I do accept RCC's argument in a narrower sense, best expressed in the language of contracts. The Board may not impose certain significant conditions precedent on RCC because to do so would constitute a barrier to entry.¹ The FCC rejected such a condition precedent in the *South Dakota Preemption Order*, on the ground that it effectively precluded designation of new entrants.¹ To require a carrier to provide universal service before it was certified, said the FCC, would be contrary to the intent of section 214(a), which contemplates certifying carriers first and then letting them provide services later.¹

On the other hand, I see nothing in the statute or judicial decision that would prevent the Board from imposing either "requirements" or "criteria" that amount to conditions subsequent.¹

34. RCC Comments on First Proposed Decision at 3 ("[T]he Board is obligated to issue an ETC certification to RCC if it has the capability to provide the Nine Required Services and commits to advertise them") ; RCC Comments on First Proposed Decision at 6 ("the [Act mandates designation] for non-rural service areas if paragraph (1)'s requirements are met").

35. *Federal State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, FCC 00-248, released Aug. 10, 2000 ("*South Dakota Preemption Order*").

36. *Id.*, ¶¶ 14, 28. The FCC also said that the action challenged in that case:

1. was a barrier to entry in violation of section 253(a). *Id.*, ¶ 10.
3. violated section 254(f) because it would be "inconsistent with the [FCC's] universal service policies and rules." *Id.*, ¶ 31.
4. violated the section 254(b) policies for universal service and in particular the "competitive neutrality" requirement that the FCC grafted into that subsection. *Id.*, ¶¶ 21-22, 31.

37. *See*, RCC Comments on First Proposed Decision at 4 ("The PFD also states, correctly, that state commissions may 'impose additional eligibility requirements on an ETC applicant.'");

Of course, no condition could ripen sooner than a reasonable time following the certification, or it too would be a barrier to entry. But within that limit, I conclude that conditions subsequent may be imposed pursuant to the public interest, convenience and necessity.

(5) The *Per Se* Standard

The Stipulating Parties also rely on a doctrine established in decisions from the FCC's Wireline Competition Bureau¹ that granting ETC status is "*per se*" in the public interest where, as here, the proposed service area includes only areas served by a nonrural incumbent telephone company. RCC argues that the Board should, or possibly must, follow this precedent.¹

The bureau's jurisdiction derives from paragraph 214(e)(6) of the Act. This paragraph gives the FCC authority to directly certify ETCs for any service area that is not subject to state commission jurisdiction. The Wireline Competition Bureau¹ has exercised this "(e)(6)" authority for tribal lands,¹ and more recently to non-tribal lands in states that lack jurisdiction to hear designation cases.¹

The statutory standard for deciding these "(e)(6)" cases is functionally identical to that applicable for the Board in this case under paragraph (e)(2).¹ Both paragraphs make a cross-

38. These orders are hereafter referred to as FCC orders. Any action taken pursuant to delegated authority has the same force and effect as actions of the FCC itself. 47 C.F.R. § 0.203.

39. RCC Comments on First Proposed Decision at 6 ("the Bureau's decisions to date, which have not been overturned, thus constitute precedent that the Board should follow").

40. The FCC delegated authority over these cases to the Common Carrier Bureau, now renamed as the Wireline Competition Bureau.

41. The FCC will itself make a threshold determination of which entity has jurisdiction to make the eligibility designation of carriers providing service on tribal lands. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (rel. June 30, 2000) ¶ 95 ("*Twelfth Report and Order*").

42. The FCC will act on a section 214(e)(6) designation request from a carrier providing service on non-tribal lands only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction. *Twelfth Report and Order* ¶ 93.

43. 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to State commission jurisdiction. In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common

reference to paragraph (e)(1) by requiring that applicants provide "the services that are supported by Federal universal service support mechanisms." Both paragraphs also qualify the obligation to certify ETCs with the phrase "consistent with the public interest, convenience and necessity."

carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

The *per se* rule originated in a 2000 case involving Cellco Partnership d/b/a Bell Atlantic Mobile ("Cellco").¹ The FCC announced that:

For those areas served by non-rural telephone companies . . . designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest. The carrier need make no further showing to satisfy this requirement. . . . We note that an important goal of the Act is to open local telecommunications markets to competition [and] Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies.¹

44. *Federal-State Joint Board on Universal Service, Cellco Partnership d/b/a Bell Atlantic Mobile*, DA 00-2895 (Common Carrier Bureau rel. Dec. 26, 2000) ("Cellco").

45. *Id.*, ¶ 14 (emphasis added, footnotes omitted).

In other words, determinations of public interest would be made upon the same Nine Requirements used to determine compliance with paragraph (e)(1), with no showing required on any other issue, including affordability, service quality, or landline substitutability.¹ *Cellco* involved the state of Delaware, a state that received no high cost support.¹ But in 2002, the FCC extended its *per se* policy to Alabama, a state that does have "nonrural" carriers receiving high-cost support.¹ In other decisions involving rural telephone company service areas in Alabama, the FCC has certified wireless carriers without using the *per se* language, but it still relied heavily on the presumed benefits of competition.¹

The Stipulating Parties contend that these Wireline Competition Bureau decisions establish a rule of law that the Public Service Board cannot in this proceeding impose added requirements for ETC certification. I agree with the Stipulating Parties that the Wireline Competition Bureau, when deciding ETC cases under paragraph (e)(6), has been willing to grant certification solely upon evidence of compliance with the Nine Requirements. However, paragraph (e)(2) and paragraph (e)(6) are distinct. Although the language concerning "public interest, convenience and necessity" is identical in both statutes, the manner in which the FCC

46. *Id.*, ¶ 15.

47. Granting ETC designation merely allowed Cellco to receive support for serving low-income consumers that qualify for the Lifeline or Link-Up support programs. *Id.*, ¶ 9.

48. The bureau determined that Corr Wireless Communications, LLC should be granted ETC status in those portions of Alabama served by Bell South, a nonrural carrier. *Federal State Board on Universal Service, Corr Wireless Communications, LLC*, Memorandum Opinion and Order, DA 02-2855 (Wireline Comp. Bur. rel. Oct. 31, 2002) ("*Corr Wireless*"). The FCC also broadened its ultimate conclusion and found that granting certification was "consistent with the public interest, *convenience, and necessity*." *Id.*, ¶ 12. This language exactly tracks the statutory language in paragraph (e)(6).

In March, 2003, the bureau once again used the *per se* rationale to conclude that it was in the public interest to grant ETC status to Farmers Cellular Telephone, Inc. in a Bell South service area. *Federal-State Joint Board on Universal Service, Farmers Cellular Telephone, Inc.*, Memorandum Opinion and Order, DA 03-754 (Wireline Comp. Bur. rel. March 12, 2003) ¶ 7 ("*Farmers Cellular*"). Inexplicably, the FCC here reverted to the older and narrower language from Cellco, stating only that granting the petition was consistent with the "public interest."

49. *RCC Holdings - Alabama*, note 20 above (Nov. 2002) (company's "service offering fulfills several of the underlying federal policies favoring competition and the provision of affordable telecommunications service to consumers"); *Federal State Joint Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, Memorandum Opinion and Order, DA 02-3317, (Wireline Comp. Bur. rel. Dec. 4, 2002) ("*Cellular South*") (app. for review pending). In both cases the petitioners were certified for service areas that included areas served by both rural and non-rural incumbents, and in both cases the bureau only discussed public interest issues in relation to areas

elects to implement its authority under paragraph (e)(6) is not preemptive of state commissions acting under paragraph (e)(2). State commissions, including the Public Service Board, have discretion to make their own determinations as to the "public interest, convenience and necessity."

I recommend that the Board decline to follow the Wireline Competition Bureau's precedent. I make this recommendation largely because the bureau has not demonstrably addressed the requirements of the statute. In decisions involving areas served by nonrural incumbents, bureau decisions show little or no factual basis. Instead, the bureau provides a recitation in which the major consideration is whether competition is desirable as a global policy. There are few facts showing a particularized understanding of the characteristics and needs of the service areas affected or of the applicant's plans to cover the service area.¹ The bureau apparently believes that the statutory requirement that certification must be "consistent with the public interest, convenience, and necessity" can be satisfied solely by the overarching policy favoring competition. At the very least this violates the usual principle of statutory construction that a specific provision takes precedence over a general provision. Moreover, applying the *per*

50. *E.g.*, the following is the entire public interest discussion in the bureau's *Corr Wireless* decision:

We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Corr as an ETC in the requested non-rural service area that is served by BellSouth.

As the Commission has previously stated, for those areas served by non-rural telephone companies, the designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest. An important goal of the Act is to open local telecommunications markets to competition, and Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies. Additionally, we note that no parties filed oppositions to the Corr Petition. We conclude that Corr has demonstrated that its designation as an ETC will fulfill the underlying federal policies favoring competition.

Corr Wireless, note 48 above, ¶ 12 (footnotes omitted).

se standard to state commission proceedings under section (e)(2) would violate the holding in *Texas PUC*, for the reasons explained above.¹

The bureau's reasoning in adopting the *per se* rule is unpersuasive, and it should not be adopted here. In cases affecting areas served by "nonrural" carriers, the *per se* rule has effectively written the "consistent with the public interest, convenience and necessity" language out of the statute. On the contrary, I conclude that section 214(e)(2) allows the Board to consider here any matter bearing on the public interest, convenience and necessity and to impose conditions on certification that are necessary for the proper application of that standard.

(6) Other State Decisions

51. See, footnote 22, above, and accompanying text.

The Stipulating Parties also note that public utility commissions in several states have issued decisions largely along the lines that they advocate here. These states include Arkansas,¹ Kansas,¹ and Mississippi.¹ The Stipulating Parties also provided copies of a recent decision by the Public Service Commission of Wisconsin¹ granting ETC status to United States Cellular Corp for a service area that included territory served by rural and nonrural carriers. For areas

52. For example, the Arkansas Public Service Commission granted Sprint Spectrum, L.P. ("Sprint PCS") ETC status in areas served by Southwest Bell Telephone Co. ("SWBT") and several GTE companies based upon a sworn affidavit certifying that Sprint PCS "can provide all services designated for federal universal service support[.]" *In re Determining Eligible Telecommunications Carriers in Arkansas*, Docket No. 97-326-U, Order No. 2 at p. 6 (Arkansas PSC Nov. 7, 1997).

53. In 2000, the Kansas Corporation Commission designated two competitive ETCs in non-rural areas served by SWBT, based on affidavits demonstrating compliance with Section 214(e)(1) of the Act. *See GCC License Corp and Sprint Spectrum L.P.*, Docket Nos. 99-GCCZ-156-ETC and 99-SSLC-173-ETC, Order #6 at p. 12 (Kansas Corp. Comm'n Jan. 18, 2000), *recon. granted in part, denied in part, on grounds unrelated to federal ETC status in Order #7* (rel. Feb. 29, 2000).

54. The Mississippi Public Service Commission bifurcated an ETC-designation proceeding to permit immediate designation in areas served by BellSouth Telecommunications, Inc., based on a showing in the application and prefiled testimony that the company met the requirements of Section 214(e)(1). *See Cellular South Licenses, Inc.*, Docket No. 01-UA-0451 at pp. 6-7 (Miss. PSC Dec. 18, 2001). While the PSC found, *sua sponte*, that designation of a competitor in areas served by a non-rural carrier would serve the public interest, it did not require such a showing from the applicant as a condition of granting the ETC designation.

55. *United States Cellular Corporation*, Final Decision, Docket No. 8225-TI-102 (Wis. PSC Dec. 20, 2002)

served by rural carriers, the Wisconsin commission performed a public interest analysis and concluded that numerous benefits would follow certification. These included increased consumer choice and allowing the applicant to expand the availability of its services.¹

These decisions do indeed show that several other state commissions have allowed ETC certifications to proceed solely on the basis of affidavits that the applicant met the Nine Requirements. The decisions of other state commissions do not, however, control whether the Vermont Public Service Board has discretion in this case to impose additional requirements. These cases do not alter my conclusion that the Board may and should consider here factors affecting the public interest and that it may impose standards in addition to those established under FCC rule, so long as they are reasonably related to the statutory language.

2. Benefits of Competition

("Wisconsin U.S.Cellular").

56. *Wisconsin U.S.Cellular*, slip op. at 8.

Many residents of Vermont live in remote areas served by Vermont's only "nonrural" telephone company but where the cost of a line extension is prohibitive. RCC's service potentially provides a significant benefit to such customers, so long as RCC's signal is capable of reaching the customer's location.¹ Furthermore, in all areas where RCC serves, rural or urban, some customers will consider wireless a viable alternative to landline service. For these customers, RCC provides direct competition to the incumbent provider. The Board should consider both of these benefits in determining whether RCC's application is consistent with the public interest, convenience and necessity. Granting ETC status to RCC can expedite the provision of competitive telephone service to Vermonters and provide additional choice for many subscribers.

3. Geographic Coverage

The Board has repeatedly expressed its concern about the very limited scope of wireless coverage in Vermont. Expanding that coverage to Vermont's more remote and rural areas is an important policy objective of this state. For that reason I examine here in some detail the state of the record regarding the extent of RCC's present coverage, the legal issues raised by evaluating RCC's coverage in this ETC case, and actions that the Board may wish to take to ensure that RCC's coverage is adequate.

For two reasons I do not consider RCC's signal coverage irrelevant to this proceeding. First, the Nine Requirements require RCC to "offer" voice grade access to the public switched network. Second, signal coverage is relevant to whether certification is consistent with the public interest, convenience and necessity.

The Stipulating Parties assert that RCC meets the requirement that it "offer" service, and RCC asserts that the number of customers to whom it can actually provide service is irrelevant.¹ RCC did provide some data useful for evaluating coverage, but the record is sparse. There is no basis in the record to conclude, and I do not conclude, that a person randomly located within RCC's proposed service area who makes a service request would be certain, or even highly

57. While that wireless service may not be sufficiently reliable to transmit data, voice service alone could be a significant benefit.

58. Kohler pf., answer 7.

likely, to be offered useful wireless service at his or her residence or location of work. The issue is whether, to receive universal service support, the Board should require RCC to offer something like "universal" coverage.

(1) RCC's Facilities and Coverage

RCC has 68 cell transmitter sites in Vermont. In constructing these sites, RCC has made a significant capital commitment to Vermont, and one that provides benefits to many Vermont communities in the proposed service area. RCC also correctly points out that service depends largely on the customer's equipment, and a more powerful antenna or better receiver can often eliminate what would otherwise be a "dead spot" where RCC's signal is too weak to provide service.¹

RCC did not submit any quantitative evidence, however, concerning the geographic scope of its effective signal. RCC has not submitted evidence on the percentage of its service area where its signal is effective nor evidence about the location and size of dead spots or coverage on major highways.

Appendix A lists the wire centers in which RCC requests certification. Appendix B lists the cell tower locations operated by RCC, although in some cases the location of the cell site is not obvious from the description. Based on comparison of these two lists and testimony given at the hearing, I reach the following conclusions on RCC's actual service coverage:

1. RCC currently provides wireless service to the billing address of a large number of Vermont customers.
2. Some customers who cannot receive service using standard equipment could receive reliable service if they used enhanced equipment in the form of external fixed antennas (on a car or home) or more powerful telephones.

59. Tr. 3/13/03 at 29-30 (Kohler).

3. In most or possibly all wire centers in the proposed service area, RCC provides reliable service to some billing addresses using standard equipment, but not to others.
4. In one or more wire centers in the proposed service area, it is possible that not a single customer can obtain reliable service at his or her billing address using standard equipment.
5. In the service area as a whole, the record is insufficient to determine whether dead spots typically comprise small "holes" that operate as exceptions to the general rule of coverage, or comprise large portions of the service area.

Based on these conclusions, RCC's willingness to "offer" service in its service area provides no meaningful guarantee, or even a high probability, that a particular customer within the requested service area will actually be able to receive that service at the customer's home or place of business. I do conclude that RCC is "offering" service, but I recommend that the Board impose some conditions subsequent to ensure that the number of customers to whom services is "offered" increases over time.

(2) Federal Support Rules and ETC Status

If RCC is certified as an ETC, it will receive federal universal service support to the extent that it "captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area."⁶⁰ Support is "targeted" to those wire centers that the FCC considers to have a high cost of providing service.⁶¹ This includes "high-cost support" that is calculated on the basis of Verizon-Vermont's forward-looking cost

60. 47 C.F.R. § 54.307(a).

61. 47 C.F.R. § 54.307(a)(1) ("A competitive eligible telecommunications carrier serving loops in the service area of a non-rural incumbent local exchange carrier shall receive support for each line it serves in a particular wire center based on the support the incumbent LEC would receive for each such line.")

characteristics, because Vermont is one of the states entitled to this "high-cost support" for nonrural carriers. Due to targeting, RCC could receive support for customers in approximately 61 of the 91 exchange areas in RCC's service area, generally those with the highest cost and most rural characteristics.

This system raises two issues that affect the public interest, convenience and necessity. First, RCC's certification could alter support to Verizon-Vermont, thereby altering the credit that Verizon's remaining customers currently derive from federal high-cost support. The parties did not provide any evidence on this point, but a substantial effect is certainly conceivable, particularly if RCC acquires customers in those exchange areas that the FCC considers to have high costs.

However, I do not believe that this effect is legitimately within the scope of this docket. Section 214(e)(2) of the federal statute, quoted above, provides that state commissions "shall" certify competitive carriers seeking certification in areas served by nonrural companies.¹ I conclude this language was intended to prevent state commissions from considering the reduction in federal support to incumbents that might ensue certification of a competitive carrier in a "nonrural area." While state commissions may consider other areas within the "public interest, convenience and necessity," I do not believe they may decline to certify an applicant ETC because it would reduce support to an incumbent carrier. If the word "shall" means anything in the second sentence of section 214(b)(2), it means at least this much.

The second issue is whether FCC may, through the peculiarities of FCC rules, obtain an undeserved windfall that is unrelated to the purposes of universal service. As a competitive carrier, RCC's support is anchored to the customer's billing address. Regardless of where the customer may actually use RCC's mobile services, the customer's "location" for universal service purposes is the customer's billing address. For example, "cost model" support for intrastate costs is \$18.19 per month for each customer with a Chelsea billing address. Support will be at least

62. 47 U.S.C. § 214(e)(2).

\$10 per month in more than a dozen wire centers and will exceed \$5 per month in more than three dozen wire centers.¹

63. Additional targeted support may be available under other programs as well, such as interstate access support.

This can produce an incongruous result. For example, consider a hypothetical RCC customer who cannot receive an RCC signal at her home in Chelsea, Vermont,¹ but who uses her RCC phone regularly for work while traveling to major U.S. cities. This hypothetical person generates over \$18 per month of federal universal service support for RCC, even though RCC's signal cannot reach her at home. It is difficult to see how this advances the goals of Section 254 of the Act, that universal service be preserved and advanced.

RCC correctly points out that RCC is subject to compensating errors in the other direction. For example, an RCC subscriber from Rutland may generate no support but may frequently utilize expensive facilities at a nearby ski area.¹ RCC also notes that under federal law, customers in hard-to-serve rural areas may purchase service for the same monthly price as customers in densely populated low-cost areas.¹

In part because of payments to wireless carriers, the national total annual payments for high cost support has increased recently. This could jeopardize the continuation of other federal support programs. Fortunately, these global issues are being addressed by the FCC and the Federal State Joint Board on Universal service,¹ and they need not detain the Public Service Board here.

The same dynamic does, however, affect capital investment, a matter that is proper for consideration in this docket. The federal funds create both an incentive and a loophole. The positive side is that RCC will naturally have an incentive to invest in rural areas like Chelsea where federal support can be generated. The best way to attract Chelsea customers may be to provide a strong signal in Chelsea. The loophole is that even if RCC's signal never reaches Chelsea, RCC could continue indefinitely to receive support for a few customers who cannot

64. For the sake of example, Chelsea is assumed here to be in the class of wire centers in which RCC can reach some but not all customers. RCC offered to determine from a map whether there are customers in Chelsea who cannot be served, but the suggestion was not taken because Chelsea is used here only to illustrate a more general point. Tr. 3/13/03 at 29-31 (Kohler). It should be emphasized that this is a hypothetical case only, and the number of such Chelsea customers, if any, cannot be determined from the record.

65. See, tr. 3/13/03 at 37-38 (statement of counsel).

66. *Id.*, at 38.

67. See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, Order (released Nov. 8, 2002).

receive service.¹ While the incentive is comforting, the possibility for continued distortion of the program's goals provides reason to ensure that RCC uses its federal funds to enhance its coverage.

(3) Pre-Certification Coverage Requirements

RCC asserts, and I agree, that the absence of ubiquitous signal coverage cannot be a basis to deny certification today. The FCC has held that to require a new entrant to provide service universally throughout a service area prior to designation as an ETC would place a new entrant in an impossible situation. In the *South Dakota Preemption Order*, the FCC said that:

68. RCC correctly points out that the reverse is also true. RCC will have some low-cost urban customers for whom it does not receive any federal support. Yet RCC will build facilities in Chelsea, if at all, in part to serve these customers too.

a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.¹

RCC still carries the burden of proving that it meets the ETC qualification criteria set forth in the Act. But the FCC has said that a carrier seeking ETC status may "make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service." The FCC listed several possible methods:

(1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.¹

In short, the FCC believes that a wireless carrier should be certified if it can show as little as a business plan or a sworn promise to "offer" service.

69. *South Dakota Preemption Order*, note 35 above, ¶ 13.

70. *South Dakota Preemption Order*, ¶ 24; *see also*, *Cellular South, supra*, at ¶ 15 ("a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service").

In a more recent decision issued in November of 2002, the FCC granted ETC certification to one of RCC's affiliates in Alabama. This case also discussed whether the applicant was offering service. The FCC found that there were "pinpoint locations" within the proposed service area where calls could not be placed,¹ but it nevertheless granted certification. It noted that FCC rules for wireless carriers acknowledge the existence of "dead spots," defined as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service."¹ The FCC found that the applicant "offered" service throughout its proposed service area, not because the applicant factually established universal coverage, but because to require such a showing would have been a barrier to entry.¹

The *South Dakota Preemption Order* applies here and must be followed. The Board cannot require universal coverage as a condition precedent to ETC certification. But this is no more than sensible policy that would be desirable even if it were not mandated by preemption. RCC undoubtedly faces unusual geographic and economic challenges in Vermont. Its proposed service area includes difficult topography and sparse settlement, requiring many cell sites to serve a small population. All of this argues in favor of giving RCC a chance to enter the market and broaden its coverage as rapidly as it can. An appropriate policy should balance these economic realities against the need for broad coverage.

(4) Post-Certification Coverage Requirements

A separate issue concerns requirements that apply after federal support has started flowing. The record here provides little assurance that RCC will expand its coverage if granted ETC certification. RCC has promised no more than to "look to" upgrade its facilities with the new money.¹ The risk to customers is reduced where, as here, the applicant is an established

71. *RCC Holdings - Alabama*, note 49 above, ¶ 15.

72. See 47 C.F.R. § 22.99.

73. *RCC Holdings - Alabama*, note 49 above, ¶ 16 (footnotes omitted). See also, *Midwest Wireless Communications, LLC*, Minnesota Public Utilities Commission, OAH Docket No. 3-2500-14980-2; PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law and Recommendation of Administrative Law Judge, Dec. 31, 2002, adopted by MPUC on Feb. 13, 2003 (carrier requesting ETC status is not required to provide ubiquitous service at the time of its application).

74. See, finding 15, above.

wireless carrier with existing facilities; at worst, RCC will fail to expand. Nevertheless, while post-certification expansion need not be fully resolved at this time, the question could arise in annual certification proceedings for support eligibility as well as in anticipated renewal of RCC's ETC certification in 2005. The Board can usefully provide some guidance here concerning its expectations in such proceedings.

Federal law does not clearly define post-certification construction requirements. The statute merely requires that ETCs "offer" certain services. By this, Congress undoubtedly meant more than that the carrier will accept money from a customer who is willing to pay. In my view, a wireless company cannot "offer" universal service to a customer over the long term if the customer cannot receive a signal from that company. For the term "offer" to have any meaning, there must be some expectation that the carrier actually can provide the service if the customer requests it. More specifically in the context of universal service, "offer" should mean that the company:

- (1) will provide service to a customer with a billing address in the service area who so requests and who pays for the service; and
- (2) has sufficient facilities to provide service (here, a usable wireless signal) to that customer at the customer's billing address or at a different address specified by the customer that represents the customer's home or work location.

The FCC seems to agree, at least in principle, that some actual coverage is required, at least eventually. FCC decisions suggest that wireless ETCs are obliged (through voluntary commitments or regulatory requirements) to provide service to many if not all of those who request service from within RCC's service area. For example, in the *South Dakota Preemption Order*, discussed above, the FCC recited that, like an incumbent, a new entrant ETC must "extend its network to serve new customers upon reasonable request."¹ This suggests an individual customer has the right to receive effective service upon request.

75. *South Dakota Preemption Order*, note 35 above at ¶ 17.

In its subsection (e)(6) decisions, however, the Wireline Competition Bureau has been satisfied with a voluntary and apparently general commitment regarding future use of federal funds. For example, in the *RCC Alabama* decision issued in November, 2002, the Wireline Competition Bureau noted that RCC had promised to "use any high-cost support it receives to improve its network and enable Alabama's rural customers to have a meaningful choice of service providers."¹ The bureau also stated, somewhat vaguely, that RCC had "committed to improve its network" and "that coverage gaps can and will be filled once [RCC] begins receiving high-cost support."¹ In Alabama, RCC apparently promised to use *all* of its support for capital expansion.¹

The issue has also been addressed in two state commission decisions cited by the Stipulating Parties. The Wisconsin Public Service Commission has stated that when an ETC's customer makes a "reasonable request" for service the company would be "required to find a way to offer service, either through extending its own facilities or other options."¹ Consistent with the *South Dakota Preemption Order*, the Wisconsin commission appears to have recognized an individual right to service.

In Minnesota, a carrier applying for ETC certification planned to offer a "basic universal service" package using a "3-watt telephone" at \$14.99 per month.¹ The Minnesota Administrative Law Judge concluded that the carrier was capable of providing service throughout its proposed service area "using a combination of the 3-watt telephone, external antennas, repeater technology, construction of additional cell sites, and if necessary, resale of another carrier's service."¹ While this does not clearly define an individual right to service, it

76. *RCC Holdings - Alabama*, note 49 above, ¶ 16 and footnote 55 (internal quotations omitted).

77. *Id.*, ¶ 16 (footnotes omitted).

78. *RCC Holdings - Alabama*, note 55 ("RCC Holdings states that it will use any high-cost support it receives 'to improve its network and enable Alabama's rural customers to have a meaningful choice of service providers.'").

79. *Wisconsin U.S. Cellular*, note 55 above, slip op. at 6.

80. See also, *Midwest Wireless Communications, LLC*, Minnesota Public Utilities Commission, OAH Docket No. 3-2500-14980-2; PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law and Recommendation of Administrative Law Judge, Dec. 31, 2002, adopted by MPUC on Feb. 13, 2003, ¶ 12.

81. *Id.*, ¶ 14.

nevertheless suggests that the commission expected the ETC to construct at least some additional cell sites and to resell wireline service, if necessary, to fill in dead spots.

I recommend that the Board establish three expectations for RCC regarding its use of federal funds made available through this ETC decision. Articulating these expectations in the initial certification Order will allow RCC to begin receiving federal support while at the same time ensuring that federal support provides the benefits for which it was intended.

(1) Uses of Support

First, RCC's capital construction budget for system expansion in Vermont should increase by the amount of its federal universal service support. This is consistent with my reading of the Wireline Competition Bureau's decision in *RCC Alabama*.¹ It is also consistent with Section 254(e), which requires eligible telecommunications carriers to "use [federal] support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."¹

To implement this requirement, RCC will have to file periodic reports about its federal support and capital spending. However, expenditures made primarily to comply with existing E-911 obligations and expenditures made primarily to comply with number portability requirements should be separately identified and excluded from current spending, because those expenses arise from sources of law unrelated to universal service. After deducting expenditures for these purposes, RCC's capital spending in Vermont should be at least equal to its federal support in Vermont, plus a reasonable base level of spending.

Defining an appropriate base spending level is not a simple matter, and I do not recommend that the issue be resolved at this time. Reductions in capital available to the telecommunications industry after 2000 probably makes historic spending an unreliable base. A suitable base spending level cannot be resolved on this record, and I recommend that the Board require RCC to make a compliance filing describing a capital expenditure base amount that would be fair under all the circumstances.

82. *RCC Holdings - Alabama*, note 49 above, note 55 ("RCC Holdings states that it will use any high-cost support it receives 'to improve its network and enable Alabama's rural customers to have a meaningful choice of service providers.'")

83. 47 U.S.C. § 254(e).

RCC maintains that this requirement for use of support funds is inconsistent with the principle of competitive neutrality. RCC correctly notes that wireline telephone companies in Vermont are not obligated to provide free line extensions to customers located more than a fixed distance from existing lines.¹ Wireless carriers, RCC maintains, should not be required to do more.

84. RCC Comments on First Proposed Decision at 9-10.

This is an important clarification, but in this context it overlooks the Board's substantial supervision of universal service expenditures of wireline carriers. Under Docket 6530, the nine wireline ETCs in Vermont that do not pass through their federal universal service as direct customer credits must report twice yearly concerning the amount of federal support they receive and their construction spending.¹ This information is used by the Board in determining whether to make the annual certification, required by the FCC, that the ETCs use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, as required by section 254(e) of the Act.

RCC's competitive neutrality argument overlooks the ubiquity of the present wireline network. RCC is correct that the existing network does not grow very much these days at common expense. However, that network has been growing for nearly a century in Vermont. Except for customers who have built in remote locations (and usually knowing that they will be living without utilities and sometimes without year-round roads), the wireline network serves essentially everyone. I am not aware of any part of Vermont where it is impossible to obtain telephone service, at the price of a line extension. For nearly all Vermonters, landline service is available for a minimal connection fee. Until RCC demonstrates that it provides similar coverage, it can appropriately face incrementally greater restrictions on its use of universal service support, restrictions intended to ensure that the support is used for the purpose intended.

(2) Expanding Coverage

Second, the Board should expect continual actual improvements in RCC's signal coverage. It is not sufficient for RCC to "look to" provide new coverage in certain areas and improved coverage in others.¹ As time passes, RCC should actually have fewer and smaller "dead spots." Eventually, it should be possible for the Board to conclude, consistent with the

85. Docket No. 6530, Amended Final Order of 1/16/02 at 22.

86. *See*, finding 15, above.

FCC's rule, that dead spots in RCC's service area are really no more than "small areas" and that they result either from very sparse settlement or from particularly challenging topography.

RCC should not be required to expend its federal universal service funds on the equivalent of individual line extensions. Once again the obligation of wireline carriers for line extensions is relevant here. As is true of wireline companies, it may not be reasonable to expect RCC to provide service to every single customer, however remote. Likewise, RCC's capital expenditures should be focused on areas with the most potential customers, not on constructing facilities in uninhabited areas.¹ Nevertheless, federal universal service funds should advance universal service in RCC's service area as a whole. For example, the Board probably should not require RCC to provide free but costly antennas to customers in remote areas. But it is a completely different matter to require that RCC show continuing improvements in its core facilities and that it is reducing the "holes" in its coverage.

(3) Assisting Customers

Third, the Board should require RCC to continue to assist potential customers to actually receive service at their place of residence or business. RCC reports that it does this kind of work

87. RCC objects to being required "to serve areas for which no customer has requested service." RCC Comments on First Proposed Decision at 10-12. The record is silent on whether potential customers know that they may "request service," whether RCC records such requests, and if so how many have been made to date. More important, nothing here should require RCC to construct facilities where no customers or potential customers are to be found. There are, however, relatively few large areas in Vermont with no potential customers.

RCC also argues that it should have to respond only to "customer requests" for service in a given area. *Id.* at 10. Yet this could be a meaningless protection. RCC has not shown that it keeps records of such requests or that

already, and this should continue. It is reasonable to expect that RCC will provide all the elements identified in the Minnesota case except resale.¹ This includes 3-watt telephones, external antennas, and "cell extenders."¹ RCC should also impose only just and reasonable charges on customers who need enhanced equipment to benefit from RCC's services.

Again, not every possible variety of customer assistance would be reasonable. RCC should respond to all reasonable requests from customers by providing sufficient facilities to extend service to that customer at the customer's billing address or at a different address specified by the customer that represents a customer's home or work location.

I do not recommend here that the Board object to RCC's current practice of charging customers for additional non-standard equipment needed to bring the RCC signal to the customer's home or place of business. These charges do add to the cost of service for rural customers. Nevertheless, as noted above, the Board allows wireline utilities to charge customers for line extensions, and this is a roughly equivalent policy in the wireless world. The present record does not demonstrate that these charges are a substantial barrier to advancing universal service, and I recommend that the Board not require a change in RCC's current practice at this time.

(4) Implementation

Three tools are available to enforce these expectations. Of narrowest scope is the consumer complaint. The Board and the Department of Public Service should stand ready to examine any complaints alleging that RCC does not provide effective assistance to customers

it even informs potential customers that they are free to make a "request" for service that will be recorded by RCC.

88. RCC has not made a commitment to offer service through resale. However, such a commitment would appear to add little or no value to its services because, while it offers customers a different carrier, it provides only those services already offered by the wireline carrier.

89. "Cell extenders" are more powerful handsets and external antennas. RCC sells these at retail. RCC also requires customers to pay for these signal enhancing devices, in one case at a price of \$250.

seeking service or that RCC imposes unreasonable charges for that assistance. The standards for resolving such complaints will necessarily be based on particular facts, and will develop on a case-by-case basis.

Second, the Board will be required annually to certify RCC's use of federal funds under § 254(e) of the Act. In Docket 6530, the Board imposed periodic reporting requirements on rural incumbent local exchange carriers in order to ensure that their support is devoted to the purposes intended.¹ RCC should file analogous reports, and the Board should review these reports before making the required annual § 254(e) certifications. I recommend that RCC make a compliance filing on the timing and contents of this report.¹

90. Docket No. 6530, Amended Final Order, 1/16/02.

91. For wireline carriers subject to separations, two reports per year are required, with the spring report containing estimated separations data and the fall report matching separations filings made with the National Exchange Carriers Association. For wireless carriers not subject to separations, only one report per year is needed. I suggest that this report could be filed by April 15 to cover the preceding calendar year's capital expenditures. That is the same date on which some wireline carriers file reports under Docket 6530.

Third, pursuant to the Stipulation, RCC will be certified as an ETC only through the end of 2005. The Stipulation establishes a procedure to review a request for recertification at that time. Under existing federal law an ETC designation may be revoked if the carrier fails to fulfill its ETC obligations after it has begun receiving universal service support.¹ The Board should describe now the minimum evidence that it expects to see in 2005 regarding the scope of RCC's actual coverage.

RCC cannot reasonably be asked to provide a signal measurement for the billing address of every single potential customer in its service area. Nevertheless, a record considerably more complete than the present one will be desirable. RCC should provide detailed evidence in recertification proceeding regarding the scope of its effective coverage. I recommend that RCC be required to file maps that distinguish between at least the following: (1) an adequate signal, defined as a signal that supports reliable communications with common portable devices; (2) a weak signal, defined as a signal that supports reliable communications only with enhanced devices; and (3) no usable signal. Sampling points should include, at minimum, a centrally located point for each city or township in the service area.¹

92. *RCC Holdings - Alabama*, note 49 above, ¶ 18.

93. The DPS proposed requiring engineering models to estimate coverages, rather than the more costly field surveys. The record does not disclose the cost of such field surveys, but they need not be complicated. Standard cell phones routinely show signal levels, even when a call is not in progress. It should require no more than a car, a cell phone and a clipboard to do a field survey. Because this seems to be a procedure that can be accomplished without undue cost, and because the reliability and cost of "engineering models" are not in the record, I do not adopt the Department's recommendation.

RCC makes two additional objections to any mandated expansion of its coverage.¹ RCC first contends that by mandating costly coverage expansions, the Board is "indirectly regulat[ing] the rates for the provision of a 'commercial mobile service.'"¹ While rate regulation is subject to the FCC's exclusive jurisdiction,¹ nothing proposed here would be rate regulation. Rate regulation would prescribe the price at which RCC may sell its service. It is the FCC and RCC that would continue to set the customer's rate, not the Public Service Board. It is not rate regulation for the Board to enforce minimum state standards of service, even if compliance with those standards imposes costs that RCC later seeks to recover from customers. This is no more than regulating the "terms and conditions of service," a power that the statute expressly reserves to the states.¹ In addition, it is not prohibited rate regulation to impose conditions subsequent to certification as an ETC that are consistent with the public interest, convenience and necessity, particularly when they increase the ability of the supported carrier to "provide" service throughout its service area.

RCC also objects that requiring of no- or reduced-cost service to customers, linking recertification to mapped coverage, or using reporting requirements to direct expenditures of universal-service funds to network expansion amounts to a prohibited regulation of entry.¹ I reject this argument as well. RCC is already operating in Vermont. It is difficult to understand how anything proposed here could plausibly be a barrier to entry for a company that already has entered the market and is competing successfully. Moreover, the proposed obligations of RCC would amount to regulation of the "terms and conditions of service," a matter expressly reserved to the states. Finally, it is not prohibited entry regulation to conclude, as I do here, that for an

94. This objection applies to any Board requirement that it provide no-cost or reduced-cost service to customers, that recertification would be linked to mapped coverage, or that RCC would face reporting requirements that would relate universal-service revenues to expenditures for network expansion.

95. RCC Comments on First Proposed Decision at 12.

96. *See*, 47 U.S.C. § 332(c)(3) ("... no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.").

97. *See*, 47 U.S.C. § 332(c)(3).

98. RCC Comments on First Proposed Decision at 12.

ETC to "provide" service throughout its service area, it must make improvements over time toward actually providing universal service.

4. Number Portability

"Local number portability" ("LNP") allows local exchange subscribers to maintain their phone numbers when changing carriers. "CMRS Wireless Service Provider Local Number Portability" ("CMRS Provider LNP" or "Wireless LNP") allows a wireless customer to transfer an existing telephone number, but only to another wireless carrier.¹

Number portability can be important to wireless customers. If competition is truly to provide benefits in Vermont, customers should be able to change carriers at low cost and little inconvenience. To force a customer to change his or her telephone number is to impose an inconvenience and often an expense as well. Particularly in a rural state where competition is attenuated and its benefits have been limited, the public interest, convenience and necessity is consistent with avoiding this inconvenience and expense for customers who wish to change their wireless carrier. RCC should be required to implement CMRS Provider LNP at a reasonable date.

On July 2, 1996, the FCC promulgated rules and deployment schedules for number portability.¹ In the *First Report and Order*, the FCC determined that "CMRS Provider LNP" would enhance competition between wireline carriers as well as promote competition between wireless and wireline carriers.¹ Implementation of CMRS Provider LNP was originally scheduled for June 30, 1999, but the FCC has since granted extensions.¹

99. While it may be theoretically useful to have LNP from wireline to wireless and the reverse, that apparently imposes additional technical issues and is a less frequent problem since for most customers wireline and wireless are not substitutable services.

100. Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) (*First Report and Order*).

101. *Id.* at 8434-36, paras. 157-160.

102. Telephone Number Portability, CC Docket No. 95-116, FCC 02-273, *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, (rel. July 26, 2002)(*Verizon Forebearance Order*), paras. 2, 31.

In an order issued in July of 2002, the FCC adopted two geographic rules for Wireless LNP. Since Vermont does not contain any of the 100 largest Metropolitan Statistical Areas in the country, it falls under the non-metropolitan rule. Under that rule, a wireless carrier that receives a request in Vermont must be capable of providing LNP within six months after receiving the request, but in no event before May 24, 2004.¹ A "request," can only be made by another wireless provider.

I recommend that the Board require RCC to provide Wireless LNP not later than May 24, 2004. The First Proposal for Decision contained this same recommendation, and its effect would have been the same as a bona fide request from a competing carrier.

103. *Id.*

Now, however, two additional factors must be considered. First, a bona fide request has been made.¹ Under existing law, therefore, RCC will be required to provide Wireless LNP by May 24, 2004, and a condition imposed here action will impose no incremental burden on RCC. A second factor, however, is that the FCC and Congress have been asked to further extend the deadline. If that request were to be granted, a condition imposed here could exceed the federal requirement.

RCC claims, but without providing any citations, that under these circumstances the Board is preempted by federal law.¹ I reject this argument. RCC has certainly correctly concluded that the FCC has the authority to mandate number portability. Indeed, the FCC has broad authority over all aspects of numbering.

RCC has not explained, however, why this Board has been preempted. Mandating LNP is a valid exercise of state law because it is a regulation of the "terms and conditions" of the services of a wireless carrier, as expressly reserved to the states.¹ Second, mandating LNP is a valid exercise of the Board's authority, derived from section 214(c)(2) of the Act, because it is consistent with the public interest, convenience and necessity.

The FCC has not preempted the states in all areas relating to number portability. In its most recent Order concerning LNP, issued in June of 2003, the FCC reconfirmed the

104. RCC Comments on First Proposal for Decision at 13.

105. RCC Comments on First Proposed Decision at 13.

106. 47 U.S.C. § 332(c)(3)(A).

November 24, 2003 deadline for CMRS providers to offer LNP.¹ In addition, the FCC delegated to the state commissions the authority to require carriers operating in the top 100 MSAs to provide LNP, in the absence of a bona fide request, under certain circumstances. While this delegated authority extends only to carriers operating within the top 100 MSAs, the FCC has recognized the importance of allowing state commissions the flexibility to accommodate consumer demand for LNP. It is far from clear that the FCC would preempt the Board in this matter, even if it were presented with the question.

In summary, RCC has not provided any detailed argument that refutes the two legal bases for Board action. In light of apparent Board authority under state and federal law, and in light of the complexity of FCC preemption and delegation in this area, I reject RCC's claim of federal preemption.

5. Conclusion

Based on the preceding, RCC will provide the services that are supported by the federal universal service support mechanisms, on a non-discriminatory basis, using its own facilities or a combination of its own facilities and resale of another carrier's services, and it will advertise the availability of such services. Also, with conditions described below, granting ETC status to RCC is consistent with the public interest, convenience, and necessity. I reach these conclusions subject to the following additional conditions which I conclude are also consistent with the public interest, convenience and necessity:

1. RCC should initially offer a Basic Service Package to customers eligible for Lifeline benefits. With state and federal discounts, and unless federal or state support levels change, this will allow customers to obtain this service package at a rate of \$8.50 per month.
2. RCC should take the steps described in the Amended Stipulation to reduce call blockage.
3. RCC should be subject to the retail service quality standards established in Docket No. 5903, Order of 7/2/99, with modifications described in the above findings. These

107. Telephone Number Portability, CC Docket No. 95-116, FCC 03-126, *Fourth Report and Order and Further Notice of Proposed Rulemaking*, (released June 18, 2003).

modifications include limiting disconnections for nonpayment of toll and requiring RCC to provide discounts to persons who are blind or visually impaired.

4. RCC should be subject to the standards of Board Rule 3.200, regarding treatment of customer deposits, with the modifications described in the above findings.

5. RCC should be subject to the standards of Rule 3.300, regarding disconnections, with the modifications described in the above findings.

6. RCC should respond to all reasonable requests for service by providing sufficient facilities to extend service to a requesting customer at the customer's billing address or at a different address specified by the customer that represents a customer's home or work location.

7. RCC should provide CMRS Provider LNP on and after May 24, 2004.

8. During the first quarter of each year, RCC should notify its subscribers in Vermont of the total amount of USF funds received in the previous year as a result of its designation as an ETC and of the approximate per-subscriber per-month benefit that support provides.

9. To facilitate annual certifications under section 254(e) of the Act, each year (beginning in 2004) on or before September 1, RCC should file reports on federal support and capital construction spending. RCC should demonstrate, through these reports, that RCC has used federal support to expand its coverage in Vermont, and in particular, that RCC's capital expenditures in Vermont exceeds the sum of its recent federal support plus a baseline spending level that predates ETC status. For these purposes, expenditures to comply with existing E-911 obligations and expenditures to comply with number portability requirements should be excluded. This obligation should cease when RCC has substantially completed its network and offers full coverage to essentially all of its service area.

10. Before the current ETC certification expires in 2005, if RCC seeks recertification, it should provide detailed evidence in its ETC recertification proceeding regarding the scope of its effective coverage. RCC should provide one or more maps. Maps should distinguish between: (a) an adequate signal, defined as a signal that supports reliable communications with common portable devices; (b) a weak signal, defined as a signal that supports reliable communications only with enhanced devices; and (c) no usable signal. Sampling points should include, at minimum, a centrally located point for each city or township in the service area.

Accordingly, I propose that the Board issue the following Order. Some provisions regarding review and renewal in the proposed Order have not been discussed above but were proposed by the Stipulating Parties and should be approved. This Second Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

I have made additional minor changes to the second, revised proposed decision pursuant to comments received from the DPS on September 12, 2003.

Dated at Montpelier, Vermont, this 15th day of October, 2003.

s/Peter Bluhm

Peter Bluhm, Esq.
Hearing Officer

1.. Board Discussion

In accordance with the procedural schedule set forth in this Second Proposal for Decision ("PFD"), the Board held oral argument on the Hearing Officer's recommended decision in this Docket on November 7, 2003. Based upon the arguments of the parties at the oral argument and our review of the evidence, we have modified the Order with respect to RCC's post-certification requirements as outlined below.

Coverage Requirements

The Hearing Officer recommends that the Board require RCC to increase its capital construction budget for system expansion in an amount commensurate to the federal universal service support it receives in order to receive continued certification as an ETC. In addition, RCC's expenditures made to comply with existing E-911 and LNP requirements should be excluded from current spending, because these expenses are incurred due to laws unrelated to universal service. The Hearing Officer also recommends that as part of any recertification proceeding regarding the scope of its effective coverage, RCC be required to provide detailed coverage maps.

RCC believes that, in reviewing annual filings that consider RCC's use of support to deploy infrastructure, the Board should focus on RCC's response to reasonable requests for service in reviewing annual filings that consider RCC's use of support to deploy infrastructure. Therefore, the company should only be required to respond to reasonable requests for service and not be required to provide actual coverage throughout a certain geographic area regardless of where requests for service originate. RCC argues that it is unnecessary to limit its discretion as to where it expends universal-service support or condition recertification to require map-demonstrated improvements to coverage. RCC also argues that the use of universal service support to deploy E-911 in high-cost areas, without any other means of cost recovery, is entirely appropriate.

While the Board believes that investment in capital construction is a useful indicator of an ETC's progress toward ubiquity of coverage, we do not believe that it is critical to demonstrating compliance with ETC certification. The Board agrees with RCC that it is also important that support be used to expand the volume of calls that the company can manage as customers access the network from their homes, cars or work places. An ETC's investments in service quality and service overall for existing customers are as necessary to serving the public interest as investments in the geographic expansion of coverage. Therefore, in recertification proceedings, RCC only will be required to provide evidence that it uses universal service support for the provision, maintenance, and upgrading of facilities and services for which the support was intended, in the same manner as wireline ETCs. Currently these ETCs are required to report on this capital spending pursuant to Docket No. 6530, Order issued January 16, 2002.

The Board also believes that services such as E-911 and LNP are an important part of a carrier's overall service quality. However, the Board agrees with the Hearing Officer that expenses incurred as a result of compliance with existing federal and state mandates unrelated to universal service, such as E-911 or LNP implementation, are properly excluded from capital construction spending supported by universal service funds.

Finally, the Board believes that the requirement for RCC to provide detailed coverage maps in connection with any recertification proceedings is a reasonable one. The Board notes that the wireless industry has recently adopted a voluntary code of conduct which requires carriers to provide more detailed coverage maps to consumers. RCC should notify the Board within 30 days if the company does not intend to comply with this standard. RCC should also notify the Board whether it believes the maps should be proprietary.

LNP

Currently many wireless carrier customers experience inconvenience and expense because they are forced to change telephone numbers when switching wireless carriers. In an effort to mitigate this problem, the Hearing Officer recommends that the Board require RCC to provide wireless LNP not later than May 24, 2004. The Hearing Officer notes that, since RCC has received a bona fide request to provide, existing federal law requires RCC to provide LNP

by May 24, 2004. RCC argues that the federal LNP requirements for rural wireless carriers may be altered prior to this date. Also, RCC contends, it would not be competitively neutral to require RCC to provide LNP where other non-ETC wireless carriers may not be required to do so.

The Board agrees with the Hearing Officer, that implementation of LNP is consistent with the public interest, convenience and necessity. The Board also believes that mandating LNP for wireless ETCs is a valid exercise of state law and within the Board's jurisdiction. However, we agree with RCC that change in federal wireless LNP requirements, which exempted other similarly situated wireless carriers, would place RCC at a competitive disadvantage against non-ETC carriers. Therefore, we will modify the LNP condition to be require RCC to implement LNP consistent with federal wireless LNP requirements.

Rulemaking

RCC requested that the Board, instead of imposing the recertification requirements contemplated in the Order, conduct a rulemaking to better determine requirements applicable to all ETCs. RCC acknowledged that the Board has discretion to adopt policy here either through rulemaking or through case decision. Since this is the first case for a wireless carrier in Vermont, we believe it is appropriate to establish a standard here. In addition, because our decision is more in line with how other ETCs are treated, we think the urgency of a general rulemaking is reduced.

Procedural Matters

The Independents have expressed concerns regarding the unusual procedural schedule adopted in this proceeding. The Independents argue that the Board's waiver and/or substitution of certain rules of procedure exclusively for the purpose of allowing RCC access to universal service support in the third quarter of 2003, makes the eventual final Order susceptible to appeal or collateral attack on procedural grounds. Accordingly, the Independents request that the Board explain the procedural significance of the First Proposal for Decision, the Initial Designation Order, the Second Proposal for Decision, and any Final Designation Order.

While the Board understands the concerns regarding procedural issues raised by the Independents, the Board believes these concerns are largely unfounded. First, the Board has the authority to waive or modify its procedural rules if it has good cause. VPSB Rule 1.200. In this case, the Board certified RCC as an ETC based upon the First Proposal for Decision, even though RCC had requested oral argument on the First Proposal for Decision, and it decided to treat RCC's comments as a Motion for Reconsideration and request for oral argument on that motion. There was no controversy regarding RCC's certification as an ETC; the only issues surrounded the imposition of conditions subsequent. The Board's calendar and the parties' calendars did not allow for oral argument at a convenient time. These are exactly the kinds of concerns that the Vermont Supreme Court has found it appropriate for the Board to consider in managing its docket. *In re Petition of Green Mountain Power Corporation*, 147 Vt. 509, 519 A.2d 595 (Vt., August 14, 1986). By changing its usual procedures, the Board was able to approve RCC's ETC designation in a timely manner, making RCC eligible for support in the third quarter of 2003 and giving its customers the benefits of universal service support for that quarter. In this case, the goal of providing RCC's Vermont customers with the benefits of universal service support when eligibility is uncontested provides good cause for the procedural changes. To avoid any confusion, we wish to clarify that we adopt the Hearing Officer's Second Proposal for Decision as the basis for our decision and as the Final Designation Order in this proceeding, except as modified herein.

2.. Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Except as modified above, the findings of fact and conclusions of law of the Hearing Officer are adopted, and the Amended Stipulation between RCC and the DPS is approved.

2. Consistent with our Order of June 26, 2003, RCC is designated as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e), with a Service Area comprised of the exchange areas described in Appendix A. This designation expires December 31, 2005.

3. Consistent with the Order of June 26, 2003, the Board did certify to the Federal Communications Commission that RCC complies with § 214(e) for federal universal service support in calendar 2003, 2004 and 2005.

4. Designation as an ETC is subject to the following conditions:

a. RCC shall initially offer a Basic Service Package to customers eligible for Lifeline benefits.

b. RCC shall take the steps described in the Amended Stipulation to reduce call blockage.

c. RCC shall be subject to the retail service quality standards established in Docket No. 5903, Order of 7/2/99, with modifications described in the findings of fact. These modifications include limiting disconnections for nonpayment of toll and requiring RCC to provide discounts to persons who are blind or visually impaired.

d. RCC shall be subject to the standards of Rule 3.200, regarding treatment of customer deposits, with modifications described in the findings.

e. RCC shall be subject to the standards of Rule 3.300, regarding disconnections, with modifications described in the findings.

f. RCC shall respond to all reasonable requests for service by providing sufficient facilities to extend service to a requesting customer at the customer's billing address or at a different address specified by the customer that represents a customer's home or work location.

g. RCC shall, in accordance with federal requirements, provide CMRS Provider LNP, i.e., on May 24, 2004, or such later date as the FCC may specify.

h. During the first quarter of each year, RCC shall notify its subscribers in Vermont of the total amount of USF funds received in the previous year as a result of its designation as an ETC and of the approximate per-subscriber per-month benefit that support provides.

i. To facilitate annual certifications under section 254(e) of the Act, each year (beginning in 2004) on or before September 1, RCC shall file reports on federal support and capital construction spending. For these purposes, expenditures to comply with existing E-911 obligations and expenditures to comply with number portability requirements shall be excluded.

j. RCC shall notify the Board and the DPS within 30 days if information previously provided in relation to its provision of the Nine Services or to advertising for those services is no longer accurate. This information previously provided is summarized in Paragraphs II.3 and 4 of the Amended Stipulation.

k. The Board retains continuing jurisdiction to review, modify, or revoke its designation of RCC as an ETC or to alter or amend the service area in all manners allowed to it under state and federal law, which may include dividing the service territory. This continuing jurisdiction may be exercised if the FCC should alter the list of requirements for ETCs.

l. On or before October 1, 2005, if it wishes to apply for recertification, RCC shall file with the Board a certification stating that it continues to satisfy all of the requirements set forth in federal law for designation as an ETC (the "ETC Requirements"), including 47 C.F.R. § 54.101(a) as it may be amended from time to time. A copy of any such certification shall also be given to the DPS.

(1) RCC shall provide detailed evidence in the recertification proceeding regarding the scope of its effective coverage. RCC shall provide one or more large-scale maps. Maps shall distinguish between: (a) an adequate signal, defined as a signal that supports reliable communications with common portable

devices; (b) a weak signal, defined as a signal that supports reliable communications only with enhanced devices; and (c) no usable signal. Sampling points shall include, at minimum, a centrally located point for each city or township in the service area. RCC shall notify the Board within 30 days if the company does not intend to comply with this standard. RCC shall also notify the Board whether they believe the maps should be proprietary.

(2) On or before November 15, 2005, the DPS may object to continued designation, stating that RCC does not continue to satisfy one or more of the ETC Requirements ("Notice of Objection").

(3) If no Notice of Objection is filed, the Board may issue a new designation order extending the designation for an additional period.

(4) If a Notice of Objection is filed, the Board shall give RCC an opportunity for hearing. The existing ETC designation created by this Order shall remain in effect until the Board issues a final order on the merits. RCC will have the burden of demonstrating that it continues to satisfy the applicable ETC Requirements listed in the Notice of Objection. If RCC carries that burden, the Board may then renew the contested designation for an additional period.

m. At any time during the term of RCC's ETC designation, the DPS or the Board may provide to RCC a written Notice of Possible Non-Compliance relating to one or more of the ETC Requirements. In that event, RCC shall within 30 days certify in writing to the Board, and deliver a copy to the DPS, that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance ("Claim of Continued Compliance"). The Board may revoke RCC's designation as an ETC or order such other remedies as the Board deems appropriate if either of the following occurs:

(1) RCC fails to file a Claim of Continued Compliance; or

(2) The Board determines, after opportunity for hearing, that RCC has not demonstrated that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance.

During the pendency of any proceedings under this paragraph, the current designation Order shall remain in effect. The DPS and RCC may at any time informally resolve or attempt to resolve compliance issues, but any formal resolution shall be subject to Board approval.

n. This Docket shall be closed when this Order, and compliance filings ordered by it, becomes final and unappealable. Any new ETC petitions shall be considered in separate dockets.

Dated at Montpelier, Vermont, this 14th day of November, 2003.

SERVICE	<u>s/Michael H. Dworkin</u>)	PUBLIC BOARD OF VERMONT
)	
	<u>s/David C. Coen</u>)	
)	
	<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 14, 2003

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Appendix A -- Exchanges Comprising RCC Service Area

Arlington	Essex Junction	Newfane	South Royalton
Barnet	Fair Haven	Newport	South Strafford
Barre	Fairfax	Norwich	Stamford
Barton	Fairlee	Orleans	Stowe
Bellows Falls	Grand Isle	Pittsfield	Swanton
Bethel	Greensboro	Pittsford	Thetford
Bennington	Guildhall	Plainfield	Troy
Bloomfield	Hardwick	Poultney	Tunbridge
Bradford	Island Pond	Pownal	Underhill
Brandon	Jacksonville	Proctor	Vergennes
Brattleboro	Jamaica	Putney	Wardsboro
Brookfield	Jeffersonville	Randolph	Waterbury
Burlington/Shelburne	Johnson	Reading	Wells River
Burlington/Winooski	Lemington	Readsboro	West Burke
Burlington	Lunenburg	Richford	West Rutland
Canaan	Lyndonville	Rochester	Westminster
Castleton	Maidstone	Rupert	White River
Chelsea	Manchester	Rutland	Williamstown
Concord	Middlebury	Saint Albans	Wilmington
Danville	Milton	Saint Johnsbury	Windsor
Derby	Montpelier	Salisbury	Woodstock
Dorset	Morgan	South Londonderry	
East Fairfield	Morrisville	South Londonderry/	
Enosburg Falls	Newbury	Stratton	

Appendix B: RCC Cell Sites

<u>Site #</u>	<u>Location</u>		
1	Redstone Campus - Burlington	61	Newbury Church
2	Mt. Pritchard	62	Georgia Mountain
3	Bolton	63	Smugglers Notch
4	Bringham Hill	70	East Barre
5	Milton	71	Sugarbush
6	Dorset Street - S. Burlington	75	Island Pond
7	Williston Rd - S.Burlington	80	Stratton Mountain
9	Alburg	81	Hurricane Hill
10	DT Burlington	83	Pico Peak
11	Colchester	84	Killington Ski Area
12	Williston	85	Mt Ascutney
13	South Hero	86	Pico Peak
14	Williston Road	87	Springfield
15	Shelburne Water Tank	88	Cherry Hill
16	Barlow Building Winooski	89	Chester
17	WCAX Burlington	90	Brattleboro
41	Mt Mansfield	91	Putney
42	Middlesex	92	Mt Olga
43	Brookfield	97	East Dorset
44	Randolph	103	Gleebe Mountain
45	Newport	104	Mt. Anthony
48	Waterbury	105	Grandpa Knob
49	Morrisville	106	Ludlow
50	WCAX - Montpelier	107	Brandon
51	City Center	108	Chipman Hill
52	Roundtop Mtn - Stowe	110	Carpenter
53	St Albans	112	South Royalton
54	Danville	113	New Haven
55	Irish Hill	114	Vergennes
56	Newbury	115	Woodstock
57	Burke Mtn	116	Mt. Snow
58	Jay Peak/No	118	Downtown Rutland
59	Barton	119	Rutland
60	Georgia	120	West Brattleboro